

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

TANYA OLSON Plaintiff, v. PERFORMANT RECOVERY, INC. Defendant.	Case No. 0:14-cv-03465 <u>COMPLAINT</u> <u>JURY TRIAL DEMANDED</u>
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NATURE OF ACTION

1. This is an action brought under the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*

JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.

3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where the acts and transactions giving rise to Plaintiff’s action occurred in this district, where Plaintiff resides in this district, and where Defendant transacts business in this district.

PARTIES

4. Plaintiff, Tanya Olson (“Plaintiff”), is a natural person who at all relevant times resided in the State of Minnesota, County of Hennepin, and City of Bloomington.

5. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3).

6. Defendant, Performant Recovery, Inc. (“Defendant”) is an entity who at all relevant times was engaged, by use of the mails and telephone, in the business of attempting to collect a “debt” from Plaintiff, as defined by 15 U.S.C. § 1692a(5).

7. Defendant is a “debt collector” as defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

8. Plaintiff is a natural person obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due a creditor other than Defendant.

9. Plaintiff's obligation, or alleged obligation, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, a personal student loan (the “Debt”).

10. Defendant uses instrumentalities of interstate commerce or the mails in a business the principal purpose of which is the collection of any debts, and/or regularly collects or attempts to collect, directly or indirectly, debts owed or due, or asserted to be owed or due another

11. In connection with the collection of the Debt, Defendant placed a call to Plaintiff's cellular telephone number on or about February 13, 2014 and left the following voicemail message:

Hey, this is a message for Tonya Olson. This is Marie Carter with PRI. If you can call me back at 1-800-927-7667, at extension 37 [call terminates].

12. Defendant's February 13, 2014 voicemail message failed to notify Plaintiff that the communication was from a debt collector.

13. Further, Defendant failed to disclose its true corporate and/or business name in its February 13, 2014 voicemail message.

14. By failing to disclose that the communication was from a debt collector and by failing to disclose its true corporate and/or business name in its February 13, 2014 voicemail message, Defendant failed to meaningfully disclose its identity to Plaintiff.

TRIAL BY JURY

15. Plaintiff is entitled to and hereby demands a trial by jury. U.S. Const. Amend. 7.
Fed. R. Civ. P. 38.

CAUSES OF ACTION

**COUNT I
VIOLATION OF 15 U.S.C. § 1692d(6)**

16. Plaintiff repeats and re-alleges each and every factual allegation above.

17. Defendant violated 15 U.S.C. § 1692d(6) by placing telephone calls without meaningfully disclosing the caller's identity.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692d(6);
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k, in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k;
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

**COUNT II
VIOLATION OF 15 U.S.C. § 1692e(11)**

18. Plaintiff repeats and re-alleges each and every factual allegation above.

19. Defendant violated 15 U.S.C. § 1692e(11) by failing to disclose in each communication that the communication was from a debt collector.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Adjudging that Defendant violated 15 U.S.C. § 1692e(11);
- b) Awarding Plaintiff statutory damages, pursuant to 15 U.S.C. § 1692k, in the amount of \$1,000.00;
- c) Awarding Plaintiff actual damages, pursuant to 15 U.S.C. § 1692k;
- d) Awarding Plaintiff reasonable attorneys' fees and costs incurred in this action;
- e) Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law;
- f) Awarding such other and further relief as the Court may deem just and proper.

Dated: September 16, 2014

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